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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT, a
Connecticut Corporation,

Plaintiff,

V.

MULHAUSER STEEL, INC., a California Corporation; ANGELES CONTRACTOR, INC., a California Corporation, and DOES 1 through 10, inclusive.

Defendants.

Case No. 8:24-cv-01913-FMO-ADS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STAY

Hearing Date: February 27, 2025
Hearing Time: 10:00 a.m.
Courtroom 6D

Filed concurrently with:

1. *Notice of Motion and Motion;*
2. *Declaration of Paul C. Hirst;*
3. *Request for Judicial Notice; and*
4. *[Proposed] Order.*

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1 Defendant Muhlhauser Steel, Inc. (“Muhlhauser”) respectfully submits the
2 following memorandum of points and authorities in support of its motion to stay the
3 instant insurance coverage action (“Coverage Action”) until resolution of the
4 underlying third-party claims asserted against it in the lawsuit styled *Angeles
5 Contractor, Inc. v. Muhlhauser Steel, Inc., et al.*, pending in Orange County Superior
6 Court, case no. 30-2021-01211990-CU-BC-CJC (“Underlying Action”).

7 **I. INTRODUCTION**

8 Muhlhauser purchased commercial general liability policies from its insurer, The
9 Travelers Indemnity Company of Connecticut (“Travelers”), and Travelers in turn
10 promised to provide Muhlhauser with certain policy benefits in the event it is sued for
11 acts or omissions arising out of the running of its business. Muhlhauser was sued in the
12 Underlying Action by Angeles Contractor, Inc. (“ACI”) (a defendant in this Coverage
13 Action) for alleged damages caused by Muehlhauser’s defective work in connection
14 with two public works construction projects. At the very same time it is fending off
15 ACI’s lawsuit, Muhlhauser now finds itself being sued by its own insurer, Travelers,
16 who wants to escape its duty to defend and indemnify Muhlhauser from and against the
17 damages claimed against it in the Underlying Action. As such, Muhlhauser is being
18 forced to manage and fight a “two-front war” where overlapping issues and facts
19 potentially conflict. For all the reasons discussed herein, Muhlhauser will suffer
20 substantial prejudice if this Coverage Action is not stayed pending resolution of the
21 Underlying Action.

22 Based upon the Supreme Court’s holding in *Landis v. North American Co.*, 299
23 U.S. 248 (1936) (“*Landis*”), courts have long recognized that an insurance coverage
24 action brought by an insurer against its insured regarding the insurer’s duties to its
25 insured in an underlying third-party claim should be stayed until the third-party claim is
26 resolved. Here, Muhlhauser is entitled to a stay so that Travelers cannot force its
27 insured to divide its limited time and resources fighting a two-front war. If forced to
28 concurrently litigate this Coverage Action, Muhlhauser will be compelled to incur

1 substantial attorney fees fighting whether Travelers has a duty to pay for any judgment
2 against Muhlhauser – before any judgment has been entered. Indeed, because
3 Muhlhauser disputes their liability in the Underlying Action, it remains distinctly
4 possible that they will obtain a defense judgment. It would be a complete waste of
5 Muhlhauser’s (and this Court’s) resources to continue this Coverage Action, fighting
6 over coverage for a judgment award that may never materialize. And, there would
7 certainly be no prejudice to Travelers in litigating coverage for any judgment against
8 Muhlhauser after one is actually entered, if ever.

9 In this Coverage Action, Travelers is attempting to disavow any obligation to
10 defend or indemnify Muhlhauser in the Underlying Action. In order to defeat
11 Travelers’ coverage claims, Muhlhauser will have to prove that the claims against it in
12 the Underlying Action are covered under Travelers’ policies. To do so, Muhlhauser will
13 have to argue that there was an “occurrence” (or accident as defined by Travelers’
14 policies), that the underlying plaintiff did sustain “property damage” (as defined by the
15 policies), and that the type of “property damage” sustained by the underlying plaintiff,
16 ACI, is not excluded by Travelers’ policies. How does Muhlhauser seek to establish
17 that it engaged in accidental conduct that caused ACI to sustain property damage in this
18 Coverage Action and at the same time claim the exact opposite in the Underlying
19 Action? Concurrent litigation of the Coverage Action and the Underlying Action under
20 these circumstances puts Muhlhauser in a grotesquely awkward position. The *Landis*
21 stay is designed to protect insureds, like Muhlhauser, from this very kind of prejudice.
22 Muhlhauser is, thus, entitled to a stay of this Coverage Action as a matter of law.

23 Furthermore, because the plaintiff in the Underlying Action (ACI) is a party to
24 this Coverage Action, Travelers can essentially team up with them against Muhlhauser.
25 For example, if this Coverage Action goes forward, Muhlhauser will be forced to look
26 for, develop and produce evidence of its own accidental conduct (to prove that there
27 was an “occurrence” as required by the Travelers’ policies) and that ACI sustained
28 damages as a result of Muhlhauser’s own accidental conduct. That clearly puts

1 Muhlhauser in the position of having to prove its own liability to obtain coverage. How
2 can Muhlhauser obtain coverage (and defeat Travelers' Coverage Action) without
3 damaging its defenses of no liability and no damages in the Underlying Action? The
4 answer is simple – Muhlhauser cannot. And, quite clearly, as a party to this Coverage
5 Action, the underlying plaintiff, ACI, will be in a position to use such evidence against
6 Muhlhauser in the Underlying Action. Thus, while ACI and Travelers may look to the
7 Coverage Action for different advantages (i.e., Travelers to establish non-coverage and
8 ACI to establish Muhlhauser's liability), they both want things adverse to Muhlhauser.
9 Staying this Coverage Action is the only way to avoid such prejudice. Muhlhauser
10 should not be faced with the specter of its insurer, Travelers, joining forces with the
11 underlying plaintiff, ACI, to prove the same issues for their respective benefits and for
12 Muhlhauser's singular disadvantage. Muhlhauser is entitled to the support and
13 assistance of its insurer, Travelers, in defending against the ACI's claims. Muhlhauser
14 receives that unfettered support and assistance only if this Coverage Action is stayed.

15 Simply put, Travelers should not be allowed to join forces with ACI, the very
16 party suing the insured in the Underlying Action. Travelers should instead be teaming
17 up with Muhlhauser and should be helping its insured fight off the claims asserted
18 against it by the underlying plaintiff, ACI. Muhlhauser should not be forced to divert
19 its limited resources from the defense of the Underlying Action in order to concurrently
20 participate in this Coverage Action.

21 A stay of the Coverage Action will not impose any prejudice upon Travelers. If
22 this matter is not stayed, however, substantial prejudice will be imposed upon
23 Muhlhauser. The only prejudice that Travelers might argue – money spent in the
24 continuing defense of Muhlhauser in the Underlying Action – is made moot by
25 California law, since the California Supreme Court has held that an insurer that defends
26 its insured immediately and entirely may seek reimbursement of its defenses fees and
27 costs from its insured. *Buss v. Superior Court*, 16 Cal.4th 35, 50-51 (1997). In this
28 Coverage Action, Travelers expressly claim they are entitled to such reimbursement

1 and, thus, there is no prejudice to Travelers if the case is stayed.

2 While Travelers is insulated from any harm if the Coverage Action is stayed,
3 Muhlhauser will sustain substantial prejudice if the Coverage Action is not stayed, as
4 they will be forced to concurrently fend off the claims being asserted against it in the
5 Underlying Action and the claims of its own insurers, Travelers, in this Coverage
6 Action. It would be patently unfair to force Muhlhauser to concurrently fight ACI in
7 the Underlying Action and Travelers in this Coverage Action. Muhlhauser's defense of
8 each claim would necessarily suffer. To which battles to devote its resources are
9 decisions that Muhlhauser should not be forced to make. These are the very kind of
10 decisions that courts have repeatedly held insureds, like Muhlhauser, do not have to
11 make. Courts have consistently made clear that insurers, like Travelers, may not put
12 their insureds in such a precarious position.

13 The bottom line here is that Muhlhauser should not be forced to prove in this
14 Coverage Action its own liability (accident) and the damages sustained by the
15 underlying plaintiff (issues that are being litigated in the Underlying Action) in order to
16 obtain coverage. Any such evidence that Muhlhauser might develop on these points in
17 order to prove coverage can undoubtedly be used against them by the ACI in the
18 Underlying Action. Accordingly, this Coverage Action should be stayed until a
19 judgment (of whatever kind) is entered in the Underlying Action. That is the only way
20 to protect Muhlhauser from the substantial prejudice that will be imposed upon it if the
21 Coverage Action proceeds forward at this time and under these circumstances.

22 Muhlhauser therefore requests that this Court exercise its sound discretion and
23 stay the insurer's coverage proceedings until final resolution of the Underlying Action
24 currently pending in Orange County Superior Court. There is no reason for the parties
25 to expect that the underlying state court action, which was filed in July 2021, will not
26 move through the state court in typical fashion and without unreasonable delays. The
27 stay requested by this motion is, thus, reasonable both in scope and time.

28 ///

1 **II. FACTUAL BACKGROUND**

2 **A. The Underlying Action**

3 On July 23, 2021, ACI filed a complaint against Muhlhauser in the Underlying
4 Action. Request for Judicial Notice filed concurrently herewith (“RFJN”), ¶ 1; and ¶ 3,
5 Exhibit B (Travelers’ complaint at ¶ 14). The Underlying Action arises from two
6 public works construction projects for the Orange Unified School District (“District”)
7 known as the Villa Park High School Interim Housing & Science Center Project (“Villa
8 Park Project”) and the El Modena High School Science Center Project (“El Modena
9 Project”). RFJN, ¶ 2, Exhibit A (ACI’s first amended complaint (“FAC”) at ¶¶ 9 and
10 12); ¶ 3, Exhibit B (Travelers’ complaint at ¶ 12).¹²

11 ACI filed its operative FAC in the Underlying Action on November 12, 2021,
12 alleging causes of action against Muhlhauser (referred to as “MSI” in the FAC) for
13 breach of written contract, enforcement of performance bond, and negligence. RFJN, ¶
14 2, Exhibit A (ACI’s FAC). ACI therein alleges that in March 2019 and April 2019,
15 respectively, it hired Muhlhauser as a steel subcontractor on the Villa Park Project and
16 El Modena Project. RFJN, ¶ 2, Exhibit A (ACI’s FAC at ¶¶ 9, 12). ACI also therein
17 alleges that, among other things, Muhlhauser performed defective work in connection
18 with both projects. RFJN, ¶ 2, Exhibit A (ACI’s FAC at ¶¶ 11, 14). And in its third and
19 sixth causes of action for negligence, ACI alleges that Muhlhauser breached its duty of
20 care by performing unacceptable and/or defective work and failing to perform work as
21 required by the Villa Park Project and El Modena Project plans and specifications, all
22 of which is alleged to have resulted in damages. RFJN, ¶ 2, Exhibit A (ACI’s FAC at
23 ¶ 25, 40).

24 ///

25 _____
26 ¹ Muhlhauser does not admit as true any of the allegations made against it in the Underlying Action
27 and this Coverage Action, all of which are hereby expressly denied, as more fully set forth in the
pleadings on file in the Underlying Action and Coverage Action.

28 ² For ease of reference, the portions of ACI’s first amended complaint (Exhibit A to RFJN) and
Travelers’ complaint (Exhibit B to RFJN) that are germane to this motion have been highlighted.

1 **B. The Policies**

2 The insurance policies at issue in this Coverage Action are two commercial
3 general liability policies that Muhlhauser purchased from Travelers, policy no. 630-
4 3J324125-TCT, in effect for the period of April 22, 2019 through April 22, 2021
5 (“Policies”). RFJN, ¶ 3, Exhibit B (Travelers’ complaint at ¶ 8). Pursuant to the
6 Policies, Travelers generally promised to, among other things, pay on behalf of
7 Muhlhauser those sums that Muhlhauser becomes legally obligated to pay as damages
8 because of, *inter alia*, “property damage” caused by an “occurrence”. RFJN, ¶ 3,
9 Exhibit B (Travelers’ complaint at ¶ 9). The Policies generally define “property
10 damage” as physical injury to or destruction of tangible property or loss of use of
11 tangible property not physically injured or destroyed, and an “occurrence” is generally
12 defined as an accident. RFJN, ¶ 3, Exhibit B (Travelers’ complaint at ¶¶ 23, 17).

13 Travelers contends that it agreed to defend Muhlhauser under the Policies in
14 connection with the Underlying Action subject to a reservation of rights, including the
15 right to seek reimbursement of payments made by Travelers in defending its insured.
16 RFJN, ¶ 3, Exhibit B (Travelers’ complaint at ¶ 20).

17 **C. The Instant Coverage Action**

18 On September 3, 2024, Travelers filed this Coverage Action against Muhlhauser
19 and ACI. RFJN, ¶ 3 (Travelers’ complaint). Travelers therein seek a determination
20 from this Court that they have no duty to defend or indemnify Muhlhauser under the
21 Policies in connection with the Underlying Action, because, according to Travelers, no
22 “property damage” caused by an “occurrence” has been alleged in the Underlying
23 Action. RFJN, ¶ 3, Exhibit B (Travelers’ complaint at ¶¶ 27, 32). Travelers also seek
24 reimbursement of the defense fees and costs paid in connection with the Underlying
25 Action, contending that it specifically reserved its right to do so. RFJN, ¶ 3, Exhibit B
26 (Travelers’ complaint at ¶ 36).

27 ///

28 ///

1 **III. ARGUMENT**

2 Where a federal court sits in diversity, *Erie Railroad Co. v. Tompkins*, 304 U.S.
3 64 (1938) and its progeny require the application of state substantive law and federal
4 procedural law. *Snead v. Metro Prop. & Cas. Insurance Company*, 237 F. 3d 1080,
5 1090 (9th Cir. 2001). A motion to stay is procedural and requires the trial court to apply
6 the factors set forth in *Landis*, *supra*, 299 U.S. 248. See *United Specialty Insurance*
7 *Company v. Bani Auto Group, Inc.*, 2018 WL 5291992, at *4 (N.D. Cal., Oct. 23,
8 2018). The trial court may also look to California law to inform its analysis under
9 *Landis*. See *United Specialty Ins. Co.*, *supra*, 2018 WL 5291992 at *4.

10 Applying both federal procedural law and California state law to this motion
11 demonstrates that a stay is warranted. Under federal law, a stay is required to avoid
12 damage to the defendant, hardship and inequity to the defendant, and to simplify the
13 factual and legal issues before this Court. California law supports that a stay is required
14 because the factual issues to be decided through this Coverage Action directly overlap
15 with the factual issues in the Underlying Action. Furthermore, Muhlhauser will be
16 compelled to fight a “two-front” war on the same overlapping issues – which further
17 supports the position that rejecting a stay would prejudice Muhlhauser.

18 **A. Federal Law Supports Muhlhauser’s Motion to Stay**

19 “[T]he power to stay proceedings is incidental to the power inherent in every
20 court to control the disposition of the causes on its docket with economy of time and
21 effort for itself, for counsel, and for litigants.” *Landis*, *supra*, 299 U.S. at 254. “The
22 decision whether to grant a stay is committed to the ‘sound discretion’ of the court and
23 is based on weighing ‘the competing interests that will be affected by the granting or
24 refusal to grant stay.’” *Great American Assurance Co. v. M.S. Industrial Sheet Metal,*
25 *Inc.*, 2011 WL 13228037, *3 (C.D. Cal. Sept. 22, 2011).

26 Specifically, a court should consider the following factors in determining
27 whether to stay a proceeding: (1) the possible damage that may result from the granting
28 of a stay; (2) the hardship or inequity which a party may suffer in being required to go

1 forward; and (3) the orderly course of justice, measured in terms of the simplifying or
2 complicating of issues, proof, and questions of law which could be expected to result
3 from a stay. *Landis, supra*, 299 U.S. at 254-255; *CMAX, Inc. v. Hall*, 300 F. 2d 265,
4 268 (9th Cir. 1962). A trial court may find “it is efficient for its own docket and the
5 fairest course for the parties to enter a stay of an action before it, pending resolution of
6 independent proceedings which bear upon the case.” *Leyva v. Certified Grocers of Cal.*
7 *Ltd.*, 593 F. 2d 857, 863 (9th Cir. 1979).

8 Here, the issues of the case and the position of Muhlhauser are very similar to
9 the defendant in *Zurich Am. Ins. Co. v. Omnicell, Inc.*, 2019 WL 570760 (N.D. Cal.
10 2019). In *Zurich*, the insurer, Zurich, filed a lawsuit seeking declaratory relief that it
11 owed its insured, Omnicell, neither a duty to defend nor a duty to indemnify. *Zurich*,
12 *supra*, at *2. Omnicell filed a motion to stay pursuant to the federal court’s inherent
13 power under *Landis* as well as cited to California law – specifically *Montrose Chem.*
14 *Corp. v. Superior Court*, 6 Cal. 4th 287, 301 (1993) – in support of its motion to stay.
15 *Id.* The court granted Omnicell’s motion to stay after a thorough and sound analysis.

16 Applying all of the above factors mentioned above to this case demonstrates that,
17 similar to the matter in *Zurich*, a stay is required in this action. Muhlhauser will be
18 harmed if a stay is rejected because it will be forced to litigate the same factual issues
19 in the Underlying Action that will inevitably be litigated and decided upon in this
20 matter, including but not limited to: (a) whether there was an occurrence or accident;
21 (b) whether Muhlhauser performed unacceptable and/or defective work; (c) whether
22 Muhlhauser failed to perform work as required by the project plans and specifications;
23 and (d) whether and to what extent there was property damage and/or other types of
24 damages -- as well as other facts alleged in the Underlying Action. Travelers cannot
25 reasonably contend that the coverage issues in the Coverage Action do not turn upon
26 facts that are being litigated in the Underlying Action. Clearly, the factual issues of
27 whether there was an occurrence or accident and, if so, what are the type and scope of
28 the damages, are issues that will have to be proved in both the Coverage Action (for

1 Muhlhauser to trigger coverage)³ and in the Underlying Action (for the underlying
2 plaintiff, ACI, to obtain a judgment award against Muhlhauser). Given these
3 overlapping factual issues, Muhlhauser is entitled to a stay of this Coverage Action.
4 There is no way that the issues to be discovered and ultimately tried in the Coverage
5 Action will not infringe upon the issues to be tried in the Underlying Action.

6 All of this will create an obvious and undue hardship on Muhlhauser, whereas
7 Travelers is not affected because it will maintain the ability to seek reimbursement
8 following the resolution of the Underlying Action. *Buss, supra*, 16 Cal.4th at 50-51
9 (1997). Finally, this accommodates the Court and is judicially efficient by allowing the
10 court in the Underlying Action to litigate the key factual issues that will ultimately
11 determine coverage and the outcome of this Coverage Action.

12 **1. A Stay Is Appropriate Because Prejudice to Muhlhauser Will**
13 **Greatly Outweigh Prejudice to Travelers**

14 Declining to stay this Coverage Action will result in substantial prejudice to
15 Muhlhauser and will greatly outweigh any prejudice suffered by Travelers. Should the
16 stay not be granted, Muhlhauser will be compelled to litigate the Underlying Action
17 while simultaneously devoting its own money and resources to litigate coverage issues
18 that directly overlap with the Underlying Action and issues that are contingent upon
19 factual findings in the Underlying Action.

20 Muhlhauser is currently engaged in the Underlying Action with ACI (a defendant
21 in this Coverage Action). Travelers agreed to defend Muhlhauser under the Policies
22 subject to a reservation of rights, including the right to seek reimbursement of defense
23

24 ³ Under California law, the parties must first establish a right to coverage under the insuring agreement
25 (which includes whether there was an “occurrence” and whether “property damage” resulted from that
26 “occurrence”) before reaching any exclusions or coverage limitations on which Plaintiffs’ rely in this
27 Coverage Action. *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 16 (1995). Thus, the insured must
28 first establish that the claims against them are potentially covered, i.e., fall within the scope of the
policy’s insuring agreement. To do that, Muhlhauser would have to prove that it caused an accident
(“occurrence”) and that the underlying plaintiff suffered “property damage” as a result. Then, the
burden shifts to Travelers to prove that any exclusions or limitations bar coverage.

1 fees and costs incurred in the Underlying Action. RFJN, ¶ 3, Exhibit B (Travelers' 2 complaint at ¶ 36). Travelers then brought this action seeking to avoid their obligation 3 to defend or indemnify Muhlhauser in the Underlying Action by overgeneralizing 4 allegations in ACI's FAC and policy language in order to describe none of those claims 5 as potentially covered under the Policies. For example, Travelers alleges that ACI's 6 claims against Muhlhauser are "limited exclusively" to claims that Muhlhauser's work 7 was not performed to specifications and experienced delays. RFJN, ¶ 3, Exhibit B 8 (Travelers' complaint at ¶ 18). That is not the case in the context of Travelers' duty to 9 defend, where California law requires insurers like Travelers to defend any suit which 10 potentially seeks damages within the coverage of the policy. *Gray v. Zurich Ins. Co.*, 65 11 Cal. 2d 263, 275 (1966) (emphasis in original).

12 Here, ACI's FAC contains allegations that, at the very least, trigger a potential 13 for coverage under the Travelers' Policies. In parsing through all of the allegations in 14 the Underlying Action to establish coverage in this Coverage Action, Muhlhauser will 15 inevitably be forced litigate the same factual issues pending resolution in the 16 Underlying Action to establish whether these claims are covered by the Travelers' 17 Policies. In the Underlying Action, Muhlhauser is litigating issues such as (a) whether 18 there was an occurrence or accident; (b) whether Muhlhauser performed unacceptable 19 and/or defective work; (c) whether Muhlhauser failed to perform work as required by 20 the project plans and specifications; and (d) whether and to what extent there was 21 property damage and/or other types of damages -- as well as other facts alleged in the 22 Underlying Action. In this Coverage Action, Muhlhauser again will have to litigate 23 these same claims by denying the allegations made by ACI in order to secure coverage 24 in the Underlying Action.

25 And, Travelers will be conducting discovery to try to disprove coverage, which 26 evidence would directly conflict with the evidence Muhlhauser needs to defend the 27 allegations in the Underlying Action. Simply put, Muhlhauser's insurer would be 28 attempting to prove a case that helps ACI, and hurts Muhlhauser, in the very suit which

1 Muhlhauser is entitled to protection from its insurance carrier.

2 Moreover, Muhlhauser will be forced to spend time and money litigating this
3 Coverage Action, despite the underlying FAC and extrinsic evidence potentially
4 triggering coverage under the Travelers' Policies. Instead of solely focusing on the
5 defense in the Underlying Action, Muhlhauser will be forced to divide its attention and
6 resources to fight this two-front war with its own carrier just to maintain a defense in
7 the Underlying Action.

8 This two-front war with Travelers prejudices Muhlhauser much more than
9 it prejudices its insurer. "Courts have found that any prejudice (if at all) to the insurer in
10 having to pay defense costs while the underlying case is pending is outweighed by
11 prejudice to the insured in having to fight a "two-front war." *Zurich Am. Ins. Co.*,
12 *supra*, 2019 WL 570760, at *6. Indeed, any such argument by Travelers that ongoing
13 defense costs represent prejudice to it as the non-moving party on a motion to stay has
14 been rejected by many courts (see, e.g., *Zurich*, *supra*, 2019 WL 570760, at *5-6;
15 *Aspen Am. Ins. Co. v. Ou*, 2019 WL 1950293, at *6 (C.D. Cal. Mar. 14, 2019); *RLI Ins.*
16 *Co. v. Ace Amer. Ins.*, 2020 WL 1322955, at *4 (N.D. Cal. Mar. 20, 2020); *National*
17 *Union Fire Ins. Co. of Pittsburgh, PA v. Rudolph and Sletten, Inc.*, 2020 WL 4039370,
18 at *8 (N.D. Cal. July 17, 2020). The Ninth Circuit has rejected this argument, too,
19 noting that being required to defend a suit does not constitute damage or prejudice
20 within the meaning of *Landis*. *Lockyer v. Mirant Corp.*, 298 F.3d 1098, 1112 (9th Cir.
21 2005).

22 On the other hand, Travelers is already obligated to defend the Muhlhauser in the
23 Underlying Action, and has reserved its right for reimbursement, which creates no
24 prejudice for the insurer. *Zurich Am. Ins. Co.*, *supra*, 2019 WL 570760, at *5.
25 Travelers does not waive any of these rights by waiting for final adjudication in the
26 Underlying Action. Thus, Travelers' position remains unchanged by granting the stay
27 and compelling them to continue to defend Muhlhauser, as they are required to do
28 under the Policies and California law.

a. **Travelers Owe Muhlhauser a Defense in the Underlying Action**

Under California law, Travelers has a broad duty to defend its insured, Muhlhauser. In an insurance coverage action regarding the duty to defend, the insurer has a higher burden than the insured. See *Watts Industries, Inc. v. Zurich American Ins. Co.*, 121 Cal.App.4th 1029, 1039 (2004). To prevail, the insured need only show that the underlying claim may fall within policy coverage while the insurer must prove it cannot. *Id.*; *Montrose, supra*, 6 Cal.4th at 300. The insurer must show conclusively that the damages sought by the third-party claimant are not covered under the policy. *Montrose, supra*, 6 Cal.4th at 300. Any doubt as to whether the facts give rise to a duty to defend is resolved in the insured's favor. *Id.* at 299-300. Any uncertainty as to whether a duty to defend is owed is resolved in favor of coverage. *Producers Dairy Delivery Co. v. Sentry Ins. Co.*, 41 Cal.3d 903, 912 (1986). Only when there is no possibility of coverage is there no duty to defend. *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 19 (1995).

16 Accordingly, while Muhlhauser need only show that the underlying claim may
17 fall within policy coverage, Travelers must prove it cannot.” *Montrose, supra*, 6 Cal.
18 4th at 300 (emphasis in original); See also *Haskel v. Superior Court*, 33 Cal. App. 4th
19 963, 978 (1995). California law requires an insured to defend any suit which potentially
20 seeks damages within the coverage of the policy. *Gray, supra*, 65 Cal. 2d at 275
21 (emphasis in original). The defense is excused only when the third-party complaint can
22 by no conceivable theory raise a single issue which could bring it within the policy
23 coverage. *Montrose*, 6 Cal. 4th at 300; *Devin v. United States Automobile Association*,
24 6 Cal. App. 4th 1149, 1157 (1992).

Indeed, the insurer must defend any claim that would be covered if true, even if the claim is in fact groundless, false or fraudulent. *Palp, Inc. v. Williamsburg Nat. Ins. Co.*, 200 Cal. App. 4th 282, 289 (2001). The California Supreme Court has held that the duty to defend “may exist” even where coverage is in doubt and ultimately does not

1 develop. *Montrose*, 6 Cal. 4th at 295. And California case law is clear that exclusions
2 and limitations on coverage in an insurance policy are “strictly construed against the
3 insurer and liberally interpreted in favor of the insured.” Delgado v. Heritage Life Ins.
4 Co., 157 Cal. App. 3d 262, 271 (Cal. Ct. App. 1984).

5 In circumstances where certain claims in an action are not covered, if a single
6 claim is potentially covered, the insurer has a duty to defend the entire “mixed” action.
7 *Buss, supra*, 16 Cal. 4th at 47-49; *Aerojet-General Corp. v. Transport Indem. Co.*, 17
8 Cal. 4th 38, 59 (1997). “To defend meaningfully, the insurer must defend immediately.
9 To defend immediately, it must defend entirely.” *Buss, supra*, 16 Cal. 4th at 49. This
10 same logic follows for “mixed” claims – a claim in which at least one of the parts is at
11 least potentially covered and at least one of the parts is not. *Aerojet, supra*, 17 Cal. 4th
12 at 60. In such a scenario, “the insurer has a prophylactic duty” to “defend the claim in
13 its entirety.” *Id.*

14 Here, Travelers contends that no coverage is afforded to Muhlhauser because,
15 according to Travelers, no “property damage” caused by an “occurrence” has been
16 alleged in the Underlying Actions. ACI’s FAC, however, contains broad allegations of
17 potentially covered claims, including allegations that ACI has suffered damages caused
18 by Muhlhauser’s allegedly unacceptable and/or defective work. Even if parts of ACI’s
19 claims include aspects that may not be covered, Travelers has a duty to defend the
20 entirety of the action even if there is only one potentially covered claim. Travelers has
21 not and cannot prove through undisputed evidence that there is no conceivable theory
22 that triggers potential coverage. Travelers therefore has a continuing duty to provide a
23 defense.

24 Furthermore, a duty to defend is triggered where, under the facts alleged,
25 reasonably inferable, or otherwise known, the complaint could fairly be amended to
26 state a covered liability. *Hartford Cas. Ins. Co. v. Swift Distribution, Inc.*, 59 Cal.4th
27 277, 287 (2014); See *Barnett v. Fireman’s Fund. Ins. Co.*, 90 Cal.App.4th 500, 508-09
28 (2001). So, even if the facts alleged in Underlying Action do not suggest a potential for

1 liability under the Travelers' Policies (for the above reasons, they do), extrinsic facts
2 known to the insurer generate a duty to defend. This is because current pleading rules
3 liberally allow amendment, and the third party cannot be the arbiter of coverage. *El-*
4 *Com Hardware, Inc. v. Fireman's Fund Insurance Company*, 92 Cal. App. 4th 205, 213
5 (2001). For these reasons, even if Travelers could somehow establish that the facts
6 alleged in ACI's FAC do not create a potential for coverage under any conceivable
7 theory, Travelers would still not escape its obligation to defend Muhlhauser unless it
8 could conclusively establish no potential for coverage under the facts alleged,
9 reasonably inferable, or otherwise known. Travelers has not and cannot reasonably
10 argue that ACI's express allegations of damages caused by Muhlhauser's supposedly
11 defective work cannot, at the very least, be reasonably inferred to be alleging damages
12 because of property damage caused by an occurrence.

13 In addition, even if the allegations in the Underlying Action were unclear or
14 ambiguous, any doubt as to whether the facts give rise to a duty to defend must be
15 resolved in the insured's favor. *Montrose*, *supra*, 6 Cal.4th at 295. Any uncertainty as
16 to whether a duty to defend is owed must be resolved in favor of coverage. *Producers*
17 *Dairy*, *supra*, 41 Cal.3d at 911. So, any doubts about what is being alleged in the
18 Underlying Action and any question about whether the Underlying Action includes
19 allegations of accidental conduct or property damage must be resolved in favor of
20 coverage. Such is the law in California.

21 The bottom line here is that although Muhlhauser paid for insurance to defend it
22 against claims and for peace of mind, Travelers now essentially proposes to use
23 Muhlhauser's premium dollars in this Coverage Action to ensure both that Muhlhauser
24 is found liable in the Underlying Action, and to ensure that Muhlhauser has no
25 coverage -- all prior to trial of the Underlying Action. The proposed collaboration of
26 Travelers with ACI to develop facts detrimental to Muhlhauser makes things worse for
27 Muhlhauser than if it had not purchased insurance from Travelers at all. No greater
28 prejudice could exist.

2. Muhlhauser Will Suffer Damage if a Stay Is Not Granted

Muhlhauser will suffer undue hardship if a stay is not granted. This hardship will greatly outweigh the hardship – if any – suffered by Travelers. Declining to stay this action will damage Muhlhauser by forcing it to fund its own defense in this Coverage Action and requiring it to spend time, money and resources litigating both the Underlying Action and this Coverage Action.

“[A]n insured’s desire to secure the right to call on the insurer’s superior resource for the defense of third party claims is, in all likelihood, typically a significant motive for the purchase of insurance. . . .” *Montrose, supra*, 6 Cal. 4th at 295-296. Muhlhauser has paid premiums to Travelers and followed all of the mandates required by the Policies. Yet, once Muhlhauser asked for a benefit of the Policies – a defense in the Underlying Action – Travelers wasted little time trying to escape its obligations of providing a defense.

The court in *Zurich* was “unpersuaded” by the insurer’s argument that it will suffer damage as a result of a stay because it would delay a determination that the insurer owes no coverage to the insured in that particular underlying action. *Zurich, supra*, 2019 WL 570760, at. *5. In *Zurich*, the court held that other courts had also been unpersuaded by such arguments, “particularly because advancing defense costs is ‘part of an insurer’s obligation and costs of doing business.’” *Id.* [citing *State Nat’l Ins. Co., Inc. v. US-SINO Inv., Inc.*, 2015 WL 5590842, at *5 (N.D. Cal. Sept. 23, 2015)]. Moreover, a “delay in the recovery of damages ‘is not the kind of prejudice which should move a court to deny a requested postponement.’” *Id.* [citing *CMAX, supra*, 300 F. 2d at 269].

In sum, Muhlhauser will be damaged by having its bargained for defense pulled out from beneath it, as well as being forced to litigate the Underlying Action and this Coverage Action, despite the Coverage Action being entirely dependent on the resolution of the Underlying Action.

111

1 **3. The Course of Justice Supports a Stay**

2 Staying this case will simplify the factual issues, legal issues, and questions
3 of law for the Court. The insurance coverage issues directly overlap with the factual
4 issues involved in the Underlying Action. For example, the factual issues of whether
5 there was an occurrence or accident and, if so, what are the type and scope of the
6 damages, are issues that will have to be proved in both the Coverage Action (for
7 Muhlhauser to trigger coverage) and in the Underlying Action (for the underlying
8 plaintiff, ACI, to obtain a judgment award against Muhlhauser). There is no way that
9 the issues to be discovered and ultimately tried in the Coverage Action will not infringe
10 upon the issues to be tried in the Underlying Action

11 Moreover, in order to defeat Travelers' coverage claims, Muhlhauser will have to
12 prove that the claims against it in the Underlying Action are covered under Travelers'
13 policies. To do so, Muhlhauser will have to argue that there was an "occurrence" (or
14 accident as defined by Travelers' Policies), that the underlying plaintiff, ACI, did
15 sustain "property damage" (as defined by the Policies), and that the type of "property
16 damage" sustained by the underlying plaintiff, ACI, is not excluded by Travelers'
17 Policies. Muhlhauser will, thus, be forced to establish that it engaged in accidental
18 conduct that caused ACI to sustain property damage in this Coverage Action and at the
19 same time claim the exact opposite in the Underlying Action.

20 As a result of this matter litigating many of the same issues already being
21 litigated in the Underlying Action, this Court will be providing analysis of issues that
22 are already unfolding in the Underlying Action. This is not an efficient use of the
23 Court's time. "A district court should avoid a needless determination of state law."
24 *Maryland Cas. Co. v. Witherspoon*, 993 F. Supp. 2d 1178, 1183 (C.D. Cal. 2014). A
25 needless determination of state law occurs when there is already an ongoing proceeding
26 regarding the "precise state law issue" in the parallel proceeding or when a lawsuit has
27 no compelling interest but is merely a diversity action. *Id.* Here, a stay would allow
28 Underlying Action to proceed and conclude, thereby resolving the issues disputed in

1 this action. The Court would only be required to apply the rulings in the Underlying
2 Action to this matter.

3 Much like in *Zurich*, a stay of the instant case would promote judicial efficiency,
4 to avoid this Court from delving into the facts of the claims in the Underlying Action.
5 *Zurich*, 2019 WL 570760, at *6. The relationship between the underlying claims will be
6 clarified through the course of litigation in the Underlying Action. *Id.* A court need not
7 preside over parallel proceedings over largely overlapping issues. *Id.* Accordingly, a
8 stay of this Coverage Action is warranted under federal law.

9 **B. California Law Supports Muhlhauser's Motion to Stay**

10 A stay of this Coverage Action is warranted under California law, too, should the
11 Court look to California law in deciding this motion. California courts have long
12 recognized that an insurance coverage action brought by an insurer against its insured
13 regarding duties owed by the insurer with respect to an underlying third-party claim
14 should be stayed until resolution of that third-party claim. *Montrose, supra*, 6 Cal.4th
15 at p. 301; *Montrose Chemical Corp. v Superior Court*, 25 Cal.App.4th 902, 909-910
16 (1994) (“*Montrose II*”); *Haskel, supra*, 33 Cal.App.4th at 979. The underlying
17 rationale for the *Montrose* stay is that concurrent litigation of the declaratory relief and
18 liability actions could prejudice the insured. *Montrose II, supra*, 25 Cal.App.4th at p.
19 909. A court may therefore stay coverage litigation to avoid prejudice to the insured,
20 such as where factual issues in the coverage case and the third-party liability action
21 overlap. *Montrose, supra*, 6 Cal.4th at pp. 301–302; *Montrose II, supra*, 25
22 Cal.App.4th at pp. 907-11; *David Kleis, Inc. v. Superior Court*, 37 Cal.App.4th 1035,
23 1051 (1995). In fact, adjudication of coverage issues in advance of resolution of the
24 third party liability action is available only when litigating the coverage action will do
25 no injury to the insured’s defense in the underlying action. *Montrose, supra*, 6 Cal.4th
26 at pp. 301-02; *White v. Western Title Ins. Co.*, 40 Cal.3d 870, 885-86 (1995) [carrier
27 required to act in good faith when filing and litigating coverage action].

28 ///

1 California law has identified three types of potential prejudices an insured may
2 suffer when its insurer brings a declaratory relief action while the underlying action is
3 in the midst of litigation. *Great American Ins. Co. v. Superior Court*, 178 Cal. App. 4th
4 at 236. Two of the three prejudices arise “when there is factual overlap with the issues
5 in the underlying action.” *Id.* The three prejudices are as follows: (1) when the insured
6 may be prejudiced if the insurer joins forces with the plaintiff in the underlying action;
7 (2) when the insured is compelled to fight a “two-front” war; and (3) when the insured
8 may be collaterally estopped from litigating factual findings in the underlying action.
9 *Great American Ins. Co. v. Superior Court*, 178 Cal. App. 4th 221, 236-237 (2009).

10 Thus, a court considering whether to stay a declaratory relief action must
11 consider precisely which issues are to be litigated in order to resolve the declaratory
12 relief action, and “whether those issues are related to factual issues yet to be litigated in
13 the underlying action.” *Great American Ins. Co.*, *supra*, 178 Cal. App. 4th at 235
14 [citing *Haskel*, *supra*, 33 Cal.App.4th at 980 (emphasis in original)].

15 “If the factual issues to be resolved in the declaratory relief action overlap with
16 issues to be resolved in the underlying litigation, the trial court must stay the
17 declaratory relief action.” *Great American Ins. Co.*, 178 Cal. App. at 235 (emphasis in
18 the original). However, even if the factual or legal issues are unrelated to the underlying
19 action, a motion to stay is warranted if the resolution of the insurer’s declaratory relief
20 action would prejudice the insured in the underlying action. *Id.* at 225.

21 Subsequent California decisions have followed *Montrose*. *See, e.g., Haskel*,
22 *supra*, 33 Cal.App.4th at p. 979 [even when an insured initiates the coverage action,
23 “[i]t is only where there is no potential conflict between the trial of the coverage
24 dispute and the underlying action that a carrier can obtain an early trial date and
25 resolution of its claim that coverage does not exist”]; *Foster-Gardner, Inc. v. Nat'l
26 Union Fire Ins. Co.*, 18 Cal.4th 857, 880, (1998); *Truck Ins. Exch. v. Superior Court*,
27 51 Cal.App.4th 985, 994-95 (1996) [if “the issue which creates a conflict must be
28 resolved in the underlying action, any declaratory relief action relating to coverage

1 should be stayed pending resolution of the underlying action”]. As follows, a stay of
2 this Coverage Action is necessary to avoid substantial prejudice to the insured
3 Defendants.

4 **1. The Coverage Action and the Underlying Action Involve
5 Common Issues of Fact**

6 An insurance coverage action is improper where the coverage issue turns upon
7 one or more facts at issue in the underlying action against the insured. *California Ins.
8 Guar. Ass'n v. Superior Court*, 231 Cal.App.3d 1617, 1623 (1991) (“CIGA”). In CIGA,
9 the court explained that a declaratory relief action should not be used for the purpose of
10 determining an issue that can be determined in the underlying action. *Id.* at p. 1624.
11 Accordingly, a court should stay a declaratory relief action pending resolution of the
12 underlying action when the coverage question turns upon facts to be litigated there.
13 *Montrose, supra*, 6 Cal.4th at p. 301.

14 Here, and for all the reasons discussed above, Travelers cannot reasonably
15 dispute that the coverage issues in the Coverage Action turn upon facts that are being
16 litigated in the Underlying Action. The factual issues of whether there was an
17 occurrence or accident and, if so, what are the type and scope of the damages, are
18 issues that will have to be proved in both the Coverage Action (for Defendants to
19 trigger coverage) and in the Underlying Actions (for the underlying plaintiffs to obtain
20 a judgment Muhlhauser is entitled to a stay of this Coverage Action, as the issues to be
21 discovered and ultimately tried in the Coverage Action will infringe upon the issues to
22 be tried in the Underlying Action.

23 **2. A Stay Is Necessary to Prevent Substantial Prejudice to
24 Muhlhauser**

25 Courts recognize the potential prejudice that could be imposed upon an insured if
26 it is forced to fight a two-front war – one against the third-party claimant and another
27 against its own insurer. *Montrose II, supra*, 25 Cal.App.4th at p. 910. In *Haskel*, the
28 court summarized the factors that a court may look to in order to determine whether the

1 request for a stay should be granted. *Haskel, supra*, 33 Cal.App.4th at p. 980. To that
2 end, courts have three concerns when they discuss prejudice to the insured, each of
3 which underscores the necessity of staying the instant Coverage Action. *Id.* at p. 979.)

4 Courts are first concerned that the insurer, who is supposed to be on the side of
5 the insured and with whom there is a special relationship, effectively attacks its insured.
6 *Id.* Clearly, the Coverage Action here raises the ugly specter of Travelers attacking its
7 insured, Muhlhauser. In order to prove coverage, Muhlhauser must prove liability (it
8 engaged in accidental conduct) and that its accidental conduct caused property damage.
9 Obviously, the plaintiff in the Underlying Action, ACI, would want Muhlhauser to
10 develop that evidence so that ACI can use it against Muhlhauser in the Underlying
11 Action. Just as obviously, the evidence that Muhlhauser would have to develop in this
12 Coverage Action would be adverse to its position in the Underlying Action (where
13 Muhlhauser is arguing that it is not liable and, even if they were, the damages are not as
14 significant as alleged). The underlying plaintiff, ACI, who is a party to this Coverage
15 Action and the Underlying Action, are well-positioned to take advantage of any
16 information or documents discovered in this coverage case and use it against
17 Muhlhauser in the Underlying Action. The most basic discovery that Travelers might
18 conduct in this Coverage Action would ask Muhlhauser to set forth those facts
19 supporting its claim to coverage and that, in turn, would compel Muhlhauser to argue
20 that it is liable (that there is an “occurrence” or accident) and that it caused property
21 damage. Muhlhauser’s responses would undoubtedly be used against it by ACI in the
22 Underlying Action. Travelers should be assisting Muhlhauser in defending the
23 Underlying Action. Travelers should not be allowed to join forces with the party suing
24 its insured in the Underlying Action.

25 Second, courts are concerned that concurrent litigation of insurance coverage and
26 liability actions requires the insured to fight a two-front war, litigating not only with the
27 underlying claimant, but also expending precious resources fighting an insurer over
28 coverage questions – this effectively undercuts one of the primary reasons for

1 purchasing liability insurance. *Haskel, supra*, 33 Cal.App.4th at p. 979. As noted in
2 *Haskel*, “[a]n insured obtains liability insurance in substantial part in order to be
3 protected against the trauma and financial hardship of litigation.” *Id.* at p. 979, fn. 14.
4 Here, Muhlhauser is being required to fight such a two-front war. Muhlhauser should
5 be able to devote their time and resources assisting with its defense in the Underlying
6 Action. Muhlhauser should not be forced to divide its resources amongst this two-front
7 war. Travelers should instead be teaming up to help Muhlhauser avoid or at the very
8 least minimize its liability in the Underlying Action.

9 Undoubtedly, Travelers in this Coverage Action and ACI in the Underlying
10 Action will see their own advantages in Muhlhauser dividing its time and resources
11 between the two lawsuits. Undoubtedly, Travelers in this Coverage Action and ACI in
12 the Underlying Action will see their own advantages in hamstringing Muhlhauser’s
13 defense, such as would occur if discovery happens in the Coverage Action. In that
14 discovery, Muhlhauser will be constantly concerned about having its responses and its
15 litigation positions in this Coverage Action used against them in the Underlying Action.
16 It is, therefore, grossly unfair for Travelers to demand that Muhlhauser participate in
17 this Coverage Action now, especially since Travelers can pursue reimbursement after
18 the Underlying Action is completed.

19 A stay of the Coverage Action will not impose any prejudice upon Travelers. As
20 discussed above, the only prejudice that Travelers might argue – money spent in the
21 continuing defense of Muhlhauser in the Underlying Action – is made moot by
22 California law, which has held that an insurer that defends its insured immediately and
23 entirely may seek reimbursement of its defenses fees and costs from its insured. *Buss,*
24 *supra*, 16 Cal.4th at 50-51. Travelers claim they are entitled to such reimbursement here
25 and, thus, there is no prejudice to Travelers if this Coverage Action is stayed. By way
26 of contrast, and for all the reasons discussed above, Muhlhauser will sustain substantial
27 prejudice if the Coverage Action is not stayed. Moreover, a stay of the Coverage
28 Action will not impose any significant prejudice upon Plaintiffs. If this matter is not

1 stayed, however, substantial prejudice will be imposed upon Defendants. Accordingly,
2 a stay of the Coverage Action is required under California law.

3 Third, courts are concerned with the risk that the insured could be collaterally
4 estopped to contest issues in the underlying case by the results in the declaratory relief
5 action. *Haskel, supra*, 33 Cal.App.4th at p. 979. Here, the factual determinations
6 Travelers will ask this Court to make are so intertwined with the factual determinations
7 in the Underlying Action that collateral estoppel could come into play, where the Court
8 here might potentially provide rulings on integral issues (e.g., whether there was an
9 accident or occurrence and, if so, the scope and extent of any resulting damages) that
10 have yet to be determined in the Underlying Action. It is impossible for Travelers to
11 rely on the coverage limitations or exclusions of its Policies to deny Muhlhauser
12 coverage without relying on the factual issues now being litigated in the Underlying
13 Action. Muhlhauser will have to make the same arguments in the Underlying Action as
14 it will in this matter. In litigating the above issues, the Court in this Coverage Action
15 will be performing the same exact role as the court in the Underlying Action in that the
16 Court here will be asked to make the same key findings as to the fault, or lack of fault,
17 of Muhlhauser, which is what is being asked of the state court in the Underlying
18 Action. A stay of this Coverage Action is, thus, warranted under California law, too.

19 **IV. CONCLUSION**

20 For all the foregoing reasons, Muhlhauser respectfully requests that the Court
21 grant an order staying this Coverage Action until after the Underlying Action has been
22 resolved.

23 DATED: January 22, 2025

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